

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD TAVARES JR
(PETITIONER)

v.

STEVEN O'BRIEN
(RESPONDENT)

FILED
CLERK OF COURT
NOV 9 2004
U.S. DISTRICT COURT
DISTRICT OF MASS.
CIVIL ACTION
NO.04-40059-FDS

PETITIONER MEMORANDUM IN SUPPORT
OF HIS MOTION AND AFFIDAVIT TO AMEND HIS PRO-SE
PETITION TO INCLUDE ONLY EXHAUSTED CLAIMS:

The petitioner Edward Tavares Jr. pro-se state prisoner, submits this memorandum of law in support of his motion to amend his petition Writ of Habeas Corpus petition to include only those claims which are exhausted. As this memorandum explains, the petitioner has filed a mixed habeas corpus petition containing both exhausted and unexhausted claims. The respondent attorney has filed on November 10/2004, Since the statute of limitations has otherwise run, dismissal of the petition pending exhaustion of all claims would result in the petitioner's being prohibited from refileing at a later date. See 28 U.S.C. § 2244(d)(1); Further the respondent's Consequently, this court should order the petitioner to amend his petition to include only those claims which are already exhausted so that the case may proceed in due course."


Based on the respondent's Motion, Memorandum and the petitioner directs this court's attention to attached affidavit the court should allow the petitioner request for amend his pro-se

(2)

petition to include on those claims which are already exhausted in the state courts. Attached herewith are refiling of complaint with the amended standard, to delete claims on page 33, and part of 34, and as stating that the trial judge should have recused himself ;where- this issue is not exhausted in state court.

Based on the above said is true and further signed under the pains and penalties of perjury on this 30 day of November 2004, petitioner motion to amend should be granted, and attached refiling of petition with only include exhausted claims, wherefore is (D) on page 33 and part of 34 , Trial judge should have recused himself is now under the amended complaint been deleted.

C/C.: DANIEL I. SMULOW
E/T/Files;

PRO-SE 
RESPECTFULLY SUBMITTED
MR. EDWARD TAVARES JR
P.O. BOX 466
GARDNER MASS. 01440